Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for	)	WC Docket No. 07-135
Local Exchange Carriers	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES,
MAINE OFFICE OF THE PUBLIC ADVOCATE,
THE NEW JERSEY DIVISION OF RATE COUNSEL, AND
THE UTILITY REFORM NETWORK
ON SECTIONS XVII L-R
OF THE FURTHER NOTICE OF PROPOSED RULEMAKING

Charles Acquard, Executive Director
NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

William C. Black
Deputy Public Advocate
Wayne R. Jortner

Senior Counsel
Maine Office of Public Advocate
SHS#112
Augusta, ME 04333
Phone (207) 287-2445
Fax (207) 287-4317

Stefanie A. Brand
Director
Division of Rate Counsel
Christopher J. White
Deputy Rate Counsel
P.O. Box 46005
Newark, NJ 07101
Phone (973) 648-2690
Fax (973) 624-1047
www.rpa.state.nj.us
njratepayer@rpa.state.nj.us

Regina Costa
Telecommunications Research Director
TURN
115 Sansome St., Suite 900
San Francisco, CA 94104
Ph. (415) 929-8876
Fax (415) 929-1132
rcosta@turn.org

February 23, 2012

SUMMARY

The National Association of State Utility Consumer Advocates ("NASUCA"), the Maine Office of the Public Advocate, the New Jersey Division of Rate Counsel ("Rate Counsel"), and The Utility Reform Network ("TURN") (collectively, "Consumer Advocates") have grave concerns about many aspects of the voluminous and far-reaching, yet fundamentally flawed Order issued by the Federal Communications Commission ("FCC"), which significantly alters universal service funds ("USF") and intercarrier compensation ("ICC").[1] Consumer Advocates nonetheless address issues that the FCC raises in its Further Notice of Proposed Rulemaking ("Notice") that relate to the implementation of the Order. As requested by the FCC, these comments specifically discuss the issues that the FCC identified in Sections XVII L through XVII R of the Notice. Consumer Advocates' initial comments focus on issues identified in Sections L, O, and P of the Notice while deferring comments on Sections N, Q, and R of the Notice until the reply round of comments.

[1] / *In the Matter of Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, released November 18, 2011. In these comments, references to the Report and Order are cited as "Order" and references to the Further Notice of Proposed Rulemaking are cited as "Notice." As the FCC is well aware, a number of parties, including NASUCA, have appealed the Order. Those appeals have been consolidated in the 10th Circuit Court of Appeals under *In re: FCC 11-161* as No. 11-9900.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES, MAINE OFFICE OF THE PUBLIC ADVOCATE, THE NEW JERSEY DIVISION OF RATE COUNSEL AND THE UTILITY REFORM NETWORK
ON SECTIONS XVII L-R
OF THE FURTHER NOTICE OF PROPOSED RULEMAKING

I. INTRODUCTION

The National Association of State Utility Consumer Advocates ("NASUCA") as an organization,[2] and NASUCA members, the Maine Office of the Public Advocate,[3] the

---

[2]/ NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates

New Jersey Division of Rate Counsel ("Rate Counsel"),[4] and The Utility Reform Network ("TURN")[5] (collectively, "Consumer Advocates") hereby submit comments in response to the Further Notice of Proposed Rulemaking ("Notice") released by the Federal Communications Commission ("FCC" or "Commission"),[6] specifically regarding the issues that the FCC identifies in Sections XVII L through XVII R of the Notice. In this portion of the Notice, the FCC seeks comment on additional topics that it says will guide the next steps to comprehensive reform of the intercarrier compensation system initiated in the Order. Specifically, the FCC asks for comments on:

- The transition to bill-and-keep for rate elements that are not specifically addressed in the Order, including origination and transport.[7]

---

primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

[3]/ The Maine Public Advocate represents all consumers of utility services in Maine, pursuant to 35-A M.R.S.A. Section 1702. The Public Advocate and staff take actions to ensure that Maine's utility customers have affordable, high quality utility services. Under Section 1702(5) of the Maine statutes, the Public Advocate may appear on behalf of utility ratepayers in "proceedings before state and federal agencies... in which the subject matter of the action affects the customers of any utility doing business in the State....."

[4]/ Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. The Rate Counsel, formerly known as the New Jersey Ratepayer Advocate, is in, but not of, the New Jersey Department of Treasury. *N.J.S.A.* §§ 52:27EE-46 *et seq.*

[5]/ The Utility Reform Network ("TURN") is a California state-wide non-profit consumer organization that has represented the interests of California telecommunications, electricity and gas customers before California and federal regulatory agencies and legislatures for the past 35 years.

[6]/ *In the Matter of Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, released November 18, 2011. In these comments, references to the Report and Order are cited as "Order" and references to the Further Notice of Proposed Rulemaking are cited as "Notice."

[7]/ See paragraphs 1297-1314 of the Notice.

- Issues that must be addressed to implement bill-and-keep.[8]
- The "reform" of end user charges and the future elimination of the ARC adopted in the Order.[9]
- IP-to-IP interconnection, including scope, incentives, and statutory issues that will help guide the development of an IP-to-IP policy framework.[10]
- The development of additional call signaling rules for one-way VoIP service providers.[11]
- The adequacy of the new and revised rules to reflect the "reform" adopted in the Order.[12]

II COMMENTS ON VARIOUS SECTIONS

A. Section L: Transition To Bill-and-Keep

Consumer Advocates reiterate their opposition to adoption of a bill-and keep regime for intercarrier compensation ("ICC"). The Commission lacks the authority to impose its wrong-headed version of ICC on all forms of traffic exchange. Among other things, a bill-and-keep regime like that proposed by the Commission unfairly disadvantages basic service customers and other end-users, who would be asked to pay for such reform through increased rates.[13] As noted by NASUCA's initial comments, the Commission's goal should be to move to a single cost-based ICC rate.[14] To achieve this objective, the Commission should have moved gradually to a cost-based rate for

---

[8]/ See paragraphs 1315-1325 of the Notice.

[9]/ See paragraphs 1326-1334 of the Notice.

[10]/ See paragraphs 1335-1398 of the Notice.

[11]/ See paragraphs 1399-1402 of the Notice.

[12]/ See paragraph 1403 of the Notice.

[13]/ See NASUCA Reply Comments, dated May 23, 2011 at 118-153.

[14]/ See NASUCA Initial Comments, dated April 18, 2011 at 10.

interstate access charges, and should have encouraged the states to bring their intrastate access charges to cost-based interstate levels. Further, the bill-and-keep regime is inconsistent with the statutory limitations of 47 U.S.C. § 252(d)(2), that implements a total long-run incremental cost ("TELRIC") methodology for reciprocal compensation, with states retaining their statutory responsibility for setting those rates. Differences in reciprocal compensation and access charges should continue until there is a common cost-based level for rates.

Crucially, all calls must make a contribution to recovery of joint and common costs. Bill-and-keep fails in that regard.

As noted in NASUCA's reply comments, under a bill-and-keep arrangement, IXCs that have no end user facilities get a terrific deal as they are freed from contributing to last mile facilities on either end of their customers' calls. Similarly, wireless carriers also benefit, as they can avoid any contribution to the costs of terminating traffic on wireline networks. Wireless carriers do not provide ubiquitous service, especially in high cost areas, but wireless callers receive the benefits of being able to reach wireline subscribers served by ILECs in high-cost areas. Likewise, VoIP providers avoid any responsibility to pay for the ability to reach subscribers of wireline networks; the avoidance of access charges has to date been one of the keys to the cost advantages of these services. Mandated bill-and-keep will only cement these cost-avoidance strategies into law. Bill-and-keep will ultimately result in a solution that unfairly shifts all joint and common cost recovery to end-users of wireline networks, especially where there is an imbalance of traffic. This is not a reasonable policy outcome, and it is not what would be expected in a competitive market.[15]

Besides the policy implications, there are substantial questions as to Commission's legal authority to impose bill-and-keep, as previously noted by NASUCA.[16] The Commission's Order, including its decision to impose a bill-and-keep regime, is now subject to various petitions for review and those petitions for review have been consolidated in the United States Court of Appeals for the 10th Circuit, as noted in footnote 1.

In view of the foregoing, the issues raised in Section L of the Notice are problematic at best because the immediate transition for terminating access charges may be overturned. The requested consideration of originating switched access, dedicated transport, tandem switching, tandem transport, dedicated signaling, and signaling for tandem switching are subject to the same challenges that have been raised about bill-and-keep for terminating access.

B. Reform of End User Charges and Elimination of ARC

Consumer Advocates question the need for any Access Recovery Charge ("ARC") in the first instance, and submit that completion of separations reform and special access reform are the first step before any recovery should be considered. Carriers should be required to demonstrate the need for any recovery by showing what these revenues and expenses are. By way of example, local loops are needed to provide both telephone services and digital subscriber line ("DSL") service, which allows

---

15/ See NASUCA Reply Comments at 119-120.

16/ *Id.* at 120-152.

broadband. Currently, carriers recover 100% of the costs of their local loops from their intrastate and interstate telephone rates but are allowed to retain all of the DSL revenues as unregulated revenues, which results in a rate-of-return that is understated. If, instead, consistent with the earlier recommendations of NASUCA, Rate Counsel and the Maine Public Advocate, a fair share of the local loop costs were allocated to *unregulated* services *prior to jurisdictional separations*,[17] the effect would be to more accurately measure the carriers' higher rate-of-return. As NASUCA and the New Jersey Division of Rate Counsel have argued, the current separations and allocation factors are skewed "to the tune of **$2-6 billion against ... ratepayers**."[18] As a result, any revenue recovery that is considered must be based on an up-to-date separation/allocation policy, and/or must consider all of a carrier's revenues in determining whether recovery of lost ICC revenues is needed.

As discussed by NASUCA in opening comments, cost-based access rates will obviate the need for access recovery mechanisms.[19] Setting a uniform access rate for all types of traffic, and ensuring that that rate covers both direct costs and provides a reasonable contribution to joint and common costs, is the most efficient approach to solving the ICC problem.[20] If access rates were to be set in this fashion, then there should be little need for an access recovery mechanism.

17/ *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, comments of the National Association of State Utility Consumer Advocates, the New Jersey Division of Rate Counsel, and the Maine Office of the Public Advocate, filed August 22, 2006.

18/ See Reply Comments of NASUCA, *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, at 2 (filed April 24, 2009).

19/ Id., p. 10.

20/ Id., pp. 96-105. As also discussed, statutory principles (both state and federal) may prevent this most efficient result. But as long as the law remains as it is, the inefficiency will exist.

Consumer Advocates repeat the argument made by NASUCA that ICC reform should not assume that complete revenue recovery is needed or necessary in the first instance. That is, why should there be any recovery of lost ICC revenue at all? As noted by Consumer Advocates, intrastate/interstate separations factors and regulated/non-regulated allocations have been frozen for more than ten years, in the face of tectonic shifts in the use of total plant. The Commission recently extended that freeze for another year.[21] NASUCA noted in its initial comments that, as the Commission itself acknowledges, the reference to "regulated revenues" in this context is questionable:

> [T]he Commission could evaluate total company regulated and non-regulated revenues. Under our "no barriers" policy, a significant portion of rate-of-return carriers' costs, including costs of upgrading the network with fiber for broadband, is allocated to regulated services, even though non-regulated services increasingly have been provided using that same network, and have accounted for an increasing percentage of revenue. As a policy matter, when evaluating recovery in the context of intercarrier compensation reform, it is unclear why the Commission would simply ignore all revenues earned from such services.[22]

This is particularly true if the recovery is to come from the end users of other carriers as envisioned by the ARC and from USF charges which are passed on to end-users by the carriers.

C. Comments on IP-to-IP Interconnection

Consumer Advocates submit that the ongoing issues raised by the FCC for comments in the FNPRM would be eliminated if the FCC would adopt the recommendations made previously by NASUCA and Rate Counsel regarding the

[21]/ *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, FCC 11-71, released May 4, 2011.

[22] / See Initial Comments dated April 18, 2011 at 111.

classification of IP-enabled service, including VoIP.[23] The FCC began looking at this issue in 2004, but has failed to decide that IP-enabled service should be declared a Title II service subject to the obligation to pay access charges, reciprocal compensation, and interconnection under Section 251 and Section 252 of the Telecommunications Act of 1996. Carriers should be directed to negotiate and as necessary invoke the arbitration remedies available in Section 252 of the Act.

D. Comments on Sections N, Q, and R

Consumer Advocates defer comments at this time on Section N, Q, and R and reserve any comments to the reply round.

III. CONCLUSION

As discussed at the outset of these comments, Consumer Advocates have grave doubts as to the legality and reasonableness of many aspect of the FCC's Order. Despite these doubts, Consumer Advocates have attempted to respond to the issues raised for comment in the Notice – despite the fact that the Notice is based on the flawed Order. On behalf of the consumers who are supposed to benefit from the FCC's decisions – who are also those who will have to pay for those decisions – Consumer Advocates commend these comments to the FCC's attention.

[23]/ See Comments filed by NASUCA in WC Docket No. 04-36 on May 28, 2004 supporting that VoIP services be classified as a Title II Service, that states should not be preempted and that intercarrier compensation should apply. See also comments and reply comments filed by Rate Counsel on May 28, 2004 and July 14, 2004 in this docket supporting that VoIP services should be classified as Title II Service subject to dual jurisdiction under Section 2(b) of the Act and subject to access charges; see Rate Counsel reply comments dated December 18, 2008 in Docket Nos. 05-337, 96-45, 03-109, 06-122, 99-200, 96-98, 01-92, 99-68 and 04-36 wherein Rate Counsel opposed classifying VoIP as an information service, increasing the subscriber line charge, preempting state authority and opposing basing USF funding on a numbers-based system but Rate Counsel supported implementing signaling requirements to deter phantom traffic and the elimination of identical support rule.

Respectfully submitted,

Charles Acquard, Executive Director
NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

William C. Black
Deputy Public Advocate
Wayne R. Jortner
Senior Counsel
Maine Office of Public Advocate
SHS#112
Augusta, ME 04333
Phone (207) 287-2445
Fax (207) 287-4317

Stefanie A. Brand
Director
Division of Rate Counsel
Christopher J. White
Deputy Rate Counsel
P.O. Box 46005
Newark, NJ 07101
Phone (973) 648-2690
Fax (973) 624-1047
www.rpa.state.nj.us
njratepayer@rpa.state.nj.us

Regina Costa
Telecommunications Research Director
TURN
115 Sansome St., Suite 900
San Francisco, CA 94104
Ph. (415) 929-8876
Fax (415) 929-1132
rcosta@turn.org

February 23, 2012